APPENDIX

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THE NATIONAL ASSOCIATION OF STATE CHARITY OFFICIALS WEBSITE

Charleston Principles

The Charleston Principles: On Charitable Solicitations Using the Internet reflects the informal, nonbinding advice of the NASCO Board of Directors to NASCO members. The Charleston Principles have been developed from over a year long process of careful study, analysis and discussion among state charity officials.

The Charleston Principles are so named because dialogue with nonprofit leaders regarding charitable solicitations using the Internet began in October 1999 in Charleston, South Carolina at the 1999 NASCO annual conference.

Putnam Barber, President of the Evergreen State Society and the Internet Nonproft Center, gave the keynote address in Charleston, SC that year. He urged NASCO to use the Internet to create a website that would further the discussion of this important subject. We listened. And here's what we have created.

The topic of charitable solicitations using the Internet will again be the focus of the next annual NASCO meeting. Check out the full agenda at NASCO 2000 AGENDA. This year the conference will be October 16 in San Diego. We also have information on how to register at NASCO 2000 Registration Info.

Comments from nonprofit leaders here on-line and in person in San Diego will inform the NASCO Board as we intend to finalize the Charleston Principles for distribution to our members in early 2001.

Readers are invited to comment on any paragraph of the Charleston Principles—just click on the phrase "Comment on this. . . ." below each paragraph to enter a discussion space reserved for that paragraph alone. There is also an opportunity to comment the entire document which will be found at the bottom of this page.

I.—The Charleston Principles: On Charitable Solicitations Using the Internet

Whereas:

1. Most charitable organizations provide valuable services to society—services that are not provided by government or the private for-profit sector. At the same time, deceptive charitable solicitations, including fraud and misuse of charitable contributions, are significant problems in our country. Reasonable state oversight can remedy or minimize such abuses while facilitating the charitable missions of those who provide needed services to our nation and communities;

Comment on this

2. Registration and financial reporting by charitable organizations and their internal fundraisers, their external commercial fundraisers and, where applicable, their fundraising counsel and commercial co-venturers is critical to (a) providing information to the public in order to increase donor confidence in those who solicit their support and (b) providing information to law enforcers to enable them to fight deception and misuse of contributions;

Comment on this

3. Existing registration statutes generally, of their own terms, encompass and apply to Internet solicitations. The application of those statutes beyond more established fundraising techniques, such as telephone, direct mail, and in-person solicitations, raises a number of issues that state charity officials are often called upon to address;

Comment on this

4. The proliferation of Web site solicitations compels state charity officials to address the issue of who has to register where;

Comment on this

5. State charity officials consistently gain valuable insights when the views of the regulated communities are sought;

Comment on this

6. Consistent guidelines addressing online charitable solicitations will assist state charity officials, as well as donors, charities, and online entrepreneurs, throughout the nation. These Principles have been adopted as guidance to state charity officials, but with the express intention of both creating a climate in which creativity and enterprise in the use of the Internet to support charitable activities is encouraged and in which the public interest is vigorously protected; and

Comment on this

7. Therefore, state charity officials discussed the formation of these Principles while gathered at the National Association of Attorneys General/National Association of State Charity Officials ([base "]NAAG/NASCO[per thou]) Conference in Charleston, South Carolina in October 1999. During the public portion of that conference, which was devoted to the subject of Internet solicitations, state charity officials began a dialogue with invited guests on this topic.

Comment on this

THEREFORE WE, THE BOARD OF DIRECTORS OF NASCO, RECOMMEND THE FOLLOWING

PRINCIPLES:

I.—General Principles

I. A. These Principles are offered as a guide to states as to when charities, and their fundraisers, fundraising counsel and commercial co-venturers may be required to register, or may be subject to enforcement action, and in what jurisdictions, with regard to charitable solicitations via the Internet. States are encouraged to use these Principles to develop common policies to implement their specific state laws, but these Principles are not necessarily the views of any particular individual, office, or state. These Principles recognize that the laws of individual states vary, and that implementation of these Principles may also vary.

Comment on this

I. B. These Principles are necessarily dynamic, and may change as laws, technology and business models change. Further discussions among states and between states and the regulated community are desirable.

Comment on this

I. C. The Internet can be a valuable and efficient forum for conducting charitable solicitations. State charity officials do not desire to discourage or limit its use.

Comment on this

I. D. The basic premise of these Principles is this: Although existing state laws govern charitable solicitations on the Internet, in many instances the use of the Internet raises new questions that state charity officials must answer in order to effectively carry out their statutory missions. Therefore, state charity officials should require registration of

those over whom their state courts could constitutionally assert personal jurisdiction to enforce a registration requirement. State charity officials and those who solicit contributions using the Internet should note that in actions to enforce state laws against deceptive charitable solicitations, including fraud and misuse of charitable funds, jurisdiction typically exists over some organizations not required to register in the state.

Comment on this

I. E. Nothing in these Principles is intended to limit jurisdiction available under common law. The traditional jurisprudence analysis for jurisdiction is the appropriate rule with which states need to comply.

Comment on this

II.—Actions to Enforce State Laws Against Charitable Solicitation Fraud States will enforce the law against any entity whose Internet solicitations mislead or defraud persons physically located within a particular state, without regard to whether that entity is domiciled in the state or is required to register in that state pursuant to these Principles.

Comment on this

III.—Application of Registration Requirements to Internet Solicitation

III. A.—Entities That Are Domiciled Within the State

III. A.1. An entity that is domiciled within a state and uses the Internet to conduct charitable solicitations in that state must register in that state. This is true without regard to whether the Internet solicitation methods it uses are passive or interactive, maintained by itself or another entity with which it contracts, or whether it conducts solicitations in any other manner.

Comment on this

III. A.2. An entity is domiciled within a particular state if its principal place of business is in that state.

Comment on this

III. B.—Entities That Are Domiciled Outside the State

III. B.1. An entity that is not domiciled within a state must register in that state if:

Comment on this

III. B.1.a. Its non-Internet activities alone would be sufficient to require registration;

Comment on this

III. B1.b.(1) The entity solicits contributions through an interactive Web site; and

Comment on this

III. B.1.b.(2) Either the entity:

Comment on this

III. B.1.b.(2)i. Specifically targets persons physically located in the state for solicitation, or

Comment on this

III. B.1.b.(2)ii. Receives contributions from the state on a repeated and ongoing basis or a substantial basis through its Web site.; or

Comment on this

III. B.1.c.(1) The entity solicits contributions through a site that is not interactive, but either specifically invites further offline activity to complete a contribution, or establishes other contacts with that state, such as sending e-mail messages or other communications that promote the Web site; and

Comment on this

III. B.1.c.(2) The entity satisfies Principle III.B.1.b.(2).

Comment on this

III. B.2. For purposes of these Principles, each of the following terms shall have the following meanings:

Comment on this

III. B.2.a. An interactive Web site is a Web site that permits a contributor to make a contribution, or purchase a product, by electronically completing the transaction, such as by submitting credit card information or authorizing an electronic funds transfer. A Web site is interactive if it has this capacity, regardless of whether donors actually use it.

Comment on this

III. B.2.b. To specifically target persons physically located in the state for solicitation means to either (i) include on its Web site an express or implied reference to soliciting contributions from that state; or (ii) to otherwise affirmatively appeal to residents of the state, such as by advertising or sending messages to persons located in the state (electronically or otherwise) when the entity knows or reasonably should know the recipient is physically located in the state. Charities operating on a purely local basis, or within a limited geographic area, do not target states outside their operating area, if their Web site makes clear in context that their fundraising focus is limited to that area even if they receive contributions from outside that area on less than a repeated and ongoing basis or on a substantial basis.

Comment on this

III. B.2.c. To receive contributions from the state on a repeated and ongoing basis or a substantial basis means receiving contributions within the entity[base']s fiscal year, or relevant portion of a fiscal year, that are of sufficient volume to establish the regular or significant (as opposed to

rare, isolated, or insubstantial) nature of those contributions. States should set, and communicate to the regulated entities, numerical levels at which it will regard this criterion as satisfied. Such numerical levels should define [base "] repeated and ongoing[per thou] in terms of a number of contributors and [base"]substantial[per thou] in terms of a total dollar amount of contributions or percentage of total contributions received by or on behalf of the charity. Meeting any threshold would give rise to a registration requirement but would not limit an enforcement action for deceptive solicitations. For example, a state might explain that an entity receives contributions on a repeated and ongoing basis if it receives at least one hundred online contributions at any time in a year and that it receives substantial contributions if it receives $25,000, or a stated percentage of its total contributions, in online contributions in a year.

Comment on this

III. B.3. An entity that solicits via e-mail into a particular state shall be treated the same as one that solicits via telephone or direct mail, if the soliciting party knew or reasonably should have known that the recipient was a resident of or was physically located in that state.

Comment on this

III. B.4. Questions may arise as to whether individual charities are required to register in a particular state when the operator of a Web site through which contributions for that charity are solicited or received is required to register, but the charity itself would not independently satisfy the criteria of Principle III.B.1.(b). As to such charities:

Comment on this

III. B.4.a. If the law of the state does not universally require the registration of all charities on whose behalf

contributions are solicited or received through a commercial fundraiser, commercial co-venturer, or fundraising counsel who is required to register, then states should independently apply the criteria of Principle III.B.1.(b) to each charity and require registration only by charities that independently meet those tests; but

Comment on this

III. B.4.b. If the law of the state universally requires registration of all charities under such circumstances, states should consider whether, as a matter of prosecutorial discretion, public policy, and the prioritized use of limited resources, it would take action to enforce registration requirements as to charities who do not independently meet the criteria of Principle III.B.1.(b); and

Comment on this

III. B.4.c. For purposes of this Principle, a charity satisfies the interactivity criterion of Principle III.B.1.b.(2)i if (i) any Web site through which contributions are solicited or received for that charity satisfies that requirement, and (ii) that Web site is operated by an entity with whom the charity contracts. This paragraph does not define the concept of interactivity, but merely addresses the application of that concept in this specific context.

Comment on this

III. B.5.Solicitations for the sale of a product or service that include a representation that some portion of the price shall be devoted to a charitable organization or charitable purpose (often referred to as [base "]commercial coventuring[per thou] or [base "]cause marketing[per thou]) shall be governed by the same standards as otherwise set out in these Principles governing charitable solicitations. Registration is therefore required in those states that require registration for such activities.

Comment on this

III. C.—General Exclusions from Registration

III. C.1. Maintaining or operating a Web site that does not contain a solicitation of contributions but merely provides program services via the Internet[~]such as through a public information Web site[~]does not, by itself, invoke a registration requirement. This is true even if unsolicited donations are received.

Comment on this

III. C.2. 2. Entities that provide solely administrative, supportive or technical services to charities without providing substantive content, or advice concerning substantive content, are not required to register. Such service providers (a) include Internet service providers and entities that do nothing more than process online transactions for a separate firm that operates a Web site or provide similar services, but (b) do not include commercial fundraisers, commercial co-venturers, or fundraising counsel. Administrative, supportive, or technical service providers may be required to register if they do more than simply provide such technical services and actually solicit, promote a Web site or engage in other conduct that requires registration. Compensation for services based on the amount of funds raised may be a strong indication the entity is doing more than simply providing technical services.

Comment on this

IV.—Principles Related to Minimizing Regulatory Responsibilities for Multi-State Filers

IV. A. State charity officials recognize that the burden of compliance by charitable organizations and their agents, professional fundraisers, commercial co-venturers and/or professional fundraising counsel should be kept reasonable in relation to the benefits to the public achieved by registration. The acceptance and use of the Unified Registration Statement

by state charity offices and the development and acceptance of other related projects to create such common forms are strongly encouraged.

Comment on this

IV. B. State charity officials recognize the power of the Internet to assist in the registration of charitable organizations and their agents. State charity offices are strongly encouraged to publish their registration and reporting forms, their laws and regulations and other related information on the Internet to facilitate registration and reporting by charitable organizations and their agents while assuring proper public accountability by regulated entities.

Comment on this

IV. C. State charity officials and charitable organizations have a mutual interest in exploring how to develop the information technology infrastructure so that registration and reporting can be accomplished electronically in the future. Collaboration on this project between state charity officials and charitable organizations, where appropriate, will advance the timeframe for establishing electronic filing. This collaboration may include discussion of the types of information that entities soliciting through the Internet should be required to retain, so that these Principles can be applied to a particular Web site. This would include information sufficient to determine, within the scope of the law and relevant donor privacy concerns, whether an entity[base']s ties to a particular state are sufficient to give rise to a registration requirement.

Comment on this

IV. D. Because disclosure to the public promotes informed giving, charitable organizations are encouraged to satisfy the IRS "widely available" standard by posting, without charge, their current Unified Registration Statement, their last three IRS Forms 990, and their complete IRS Form 1023 or 1024

application and resulting determination letter on their Web pages. Links to other sites that provide such information, including any relevant state agency, or other Web sites, are also encouraged. Such postings, however, do not currently fulfill any applicable registration requirements.

Comment on this

Copyright (c)2000, National Association of State Charities Officials Click on the link below to enter a discussion of general issues and concerns associated with the Charleston Principles. Thank you for your interest and participation.

Comment on this